

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

DOUG BAILLIE,	:	Case No. 1:02cv00062-SAS
	:	J. Spiegel
Plaintiff,	:	
	:	
v.	:	
	:	
CHUBB & SON INSURANCE,	:	<u>PLAINTIFF'S MOTION FOR LEAVE TO FILE A SUR-REPLY BRIEF</u>
	:	
Defendant.	:	

Comes now Plaintiff Doug Baillie ("Mr. Baillie," "Plaintiff") and moves this Court to file the attached two-page proffer of his sur-reply in opposition to summary judgment.

Respectfully submitted,

/s/ Randolph H. Freking
Randolph H. Freking (0009158)
Trial Attorney for Plaintiff
FREKING & BETZ
215 E. Ninth Street, Fifth Floor
Cincinnati, OH 45202
(513) 721-1975
(513) 651-2570
randy@frekingandbetz.com

Memorandum

Plaintiff requests such leave for the very limited purpose of responding to two arguments raised in the reply brief filed by Defendant Chubb & Son Insurance (“Defendant,” “Chubb”). In its reply brief in support of its motion for summary judgment, Defendant asserts that Mr. Baillie’s “claim for punitive damages and any claim for damages resulting from his voluntary election not to exercise stock options” must be dismissed, as according to Defendant, Mr. Baillie “fails to even address Chubb’s argument and evidence regarding punitive damages and unexercised stock option.” (Def. Rep. Supp. Def. M.S.J.) These assertions are contrary to law and cannot properly be determined at the summary judgment stage.

Plaintiff respectfully requests that this Court file the attached two-page proffer of his sur-reply, clarifying that Plaintiff has not surrendered claims to Defendant’s motion for summary judgement merely by resisting response to issues Defendant should not raise at the summary judgment stage. A two-page proffer of the proposed sur-reply is attached.

Respectfully submitted,

/s/ Randolph H. Freking
Randolph H. Freking (0009158)
Trial Attorney for Plaintiff
FREKING & BETZ
215 E. Ninth Street, Fifth Floor
Cincinnati, OH 45202
(513) 721-1975
(513) 651-2570
randy@frekingandbetz.com

CERTIFICATE OF SERVICE

I hereby certify that on November 18, 2003, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system and copies will be mailed via U.S. mail to those parties who are not served via the Court's electronic filing system. Parties may access this filing through the Court's System.

/s/ Randolph H. Freking